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April 10, 2017

Marlene Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

via electronic filing

RE: Notice of Oral Ex Parte Presentation
Promoting Diversification of Ownership in the Broadcasting Services,
MB Docket 13-236

Dear Ms. Dortch:

On April 6, 2017, I spoke by telephone with David Grossman, Chief of Staff and Media Advisor for Commissioner Clyburn regarding a draft Order on Reconsideration, which if adopted, would relieve noncommercial broadcast stations from certain reporting requirements in connection with the Form 323-E Biennial Ownership Reports. On the call, I pointed out a number of troubling aspects of this draft order.

First, the draft order would compromise the accuracy and completeness of the FCC's ownership data. FCC rules generally require that noncommercial licensees report for each officer and director involved in operating the station: name; a unique number, known as an FCC Registration Number (FRN) or a Restricted Use FRN (RUFRN); gender; race; and ethnicity. The draft order would allow noncommercial stations that have not yet obtained FRNs or RUFRNs, to instead use a Special Use FRNs (SUFRN).

The Commission previously allowed commercial licenses to use SUFRNs, but found that they presented many problems.

Based on the Commission's experience reviewing the ownership reports submitted during three separate biennial reporting cycles, it is clear that SUFRNs have been used in a manner that is inconsistent with the Commission's direction

and that undermines the integrity of the data. On the one hand some SUFRNs have been used in conjunction with multiple individuals, and on the other hand individuals have used multiple SUFRNs. Because the Commission currently cannot determine whether two SUFRNs identify one or more individuals, it cannot reliably examine the complete attributable holdings of an individual reported with an SUFRN (either at a specific time or over time), or search, aggregate, and cross reference the ownership data.

Promoting Diversification of Ownership in the Broadcasting Services et al., Report and Order, Second Report and Order, and Order on Reconsideration, 31 FCC Rcd 398 at ¶29 (2016). The Commission also found that SUFRNs “undermine the Commission’s ability to electronically process ownership data and make it difficult for the Commission and outside analysts to evaluate the data.” *Id.* at ¶59. Given these problems, it is arbitrary and capricious for the FCC to reverse itself and allow noncommercial licensees to use SUFRNs.

Second, although the Commission has repeatedly recognized the need to obtain and analyze complete, accurate and verifiable ownership data, it has often dragged its feet in doing so. In this case, for example, the FCC first proposed to collect race and gender of attributed owners from noncommercial licenses in May 2009. *4th FNRPM*, 24 FCC Rcd 5896. Yet, the FCC did not act on this proposal until January 20, 2016, just a few months before the oral argument in *Prometheus III*, 824 F.3d 33 (2016).

In *Prometheus II*, the Court remanded the FCC’s 2006 Quadrennial Review Order for failure to consider ways to increase opportunities for minorities and women to own broadcast station. It found that the “FCC’s own failure to collect or analyze data” did not excuse its failure to address proposals designed to increase ownership diversity. It directed that in the 2010 Quadrennial Review that “[i]f the Commission requires more and better data to complete the necessary *Adarand* studies, it must get the data and conduct up-to-date studies.” 652 F.3d at 471 n. 42.

Nonetheless, the Commission did not get the data it needed in either the 2010 or the 2014 Quadrennial Reviews. My clients *Prometheus Radio et al.* are now back in court for the fourth time contending that the FCC has failed to comply with the Court’s remands in *Prometheus II* and *III*. If the FCC adopts the draft order, the Court may view that action as taking a step backwards in terms of complying with the remand orders.

Third, to the extent that the draft order could be read to suggest that this change is necessary because government data bases are insecure and that submitting one’s SSN (or some combination of information that could allow someone to predict one’s SSN) creates a risk of identity theft, such problems (if they exist) should be addressed directly. Exempting only noncommercial stations from the requirement of using an FRN or RUFRN will not solve the problem, and it may encourage commercial broadcasters to seek the same relief.

Finally, it is important to have complete and accurate ownership data that includes non-commercial stations. Non-commercial stations count toward local radio and television limits, and they obviously contribute to viewpoint diversity. Moreover, the FCC and public need data

about noncommercial stations to assess the effectiveness of Commission policies designed to further minority and women's ownership. For example, Commission rules permit eligible entities that purchase a construction permit extra time to construct the station. The staff found that 67 percent of the eligible entities that utilized this preference were noncommercial educational stations. But without race, gender, and ethnicity data for noncommercial stations, it could not evaluate the effectiveness of this program. *2014 Quadrennial Review Order*, 31 FCC Rcd 398 at ¶276 & n. 843.

Respectfully submitted,

/s/ Angela J. Campbell
Angela J. Campbell

cc. David Grossman